percent share of ASkyB.[47] Further, with MCI reducing its stake in ASkyB to 20 percent, News Corp.'s 50 percent share will grant the Australian company, as the single largest equity owner, unrivaled power over the operations of ASkyB, moving from a position of negative control to likely de facto control as its the largest equityholder. Additionally, executives from both MCI and News Corp. have acknowledged News Corp.'s pivotal role in ensuring ASkyB's commercial success, noting that the programming venture will benefit from the huge economies of scale gained from News Corp.'s world-wide business interests, including News Corp.'s interests in DBS providers in Europe (British Sky Broadcasting), Asia (Star TV), Japan (Japan Sky Broadcasting) and Latin America (Sky Entertainment Services).[48]

Accordingly, if the Commission grants MCI's application to transfer control of its DBS authorization to BT, once BT acquires ownership and control of MCI, not only will the DBS licensee be 100 percent foreign-owned, but the joint venture created to select and provide programming over the licensed DBS system will be, at a minimum, 50 percent Australian-owned. Moreover, News Corp. will clearly have control over the DBS venture, and apparently will bear the greatest financial responsibility.

---

[47]Recent press releases have indicated that News Corp. Chairman Rupert Murdoch is considering selling to the public the 30 percent interest in ASkyB vacated by MCI. See Communications Daily, Dec. 30, 1996, Vol. 16, No. 251, at 5. Mr. Murdoch had earlier indicated that he was also considering simply buying out MCI's stake in ASkyB. See "BT/MCI Deal Roils DBS Plans, Too," Multichannel News, Nov. 11, 1996, at 74.

[48]See "MCI and News Corp. Announce DTH Plans," Video Technology News, May 6, 1996, Vol. 9, No. 10; Communications Daily, December 18, 1996 at 8 (service in Japan is scheduled to commence experimental operations in April of 1997); "Sky Entertainment Services Launched in Mexico," Satellite News, January 6, 1997.

Should the Commission grant MCI's transfer application, while BT would control the DBS license itself, News Corp. would be primarily responsible for the expenditures in connection with initiating DBS service, and thereafter the selection and provision of programming and information to American consumers. The Commission has held that, in the context of applying the foreign ownership restrictions contained in Section 310(b)(4) of the Communications Act, "where a simple 'count the shares' methodology leads to patently absurd results that defeat the congressional intent, we intend to fill any such voids in the law consistent with the underlying congressional purpose."[49]

Further, the Commission has acknowledged that it "must examine the economic realities of the transactions under review and not simply the labels attached by the parties to their corporate incidents."[50] In Fox I, although News Corp. owned only 24 percent of the total number of outstanding shares of the FCC licensee's parent company, News Corp. had contributed over 99 percent of the capital invested in the licensee's parent company. The Commission concluded that News Corp.'s 99 percent capital contribution "greatly exceed[ed]" the 25 percent alien ownership benchmark established in Section 310(b)(4) of the Communications Act.[51]

Similarly, while it has not at this time applied for authority to control the actual DBS licensee, it is clear that News Corp., through ASkyB, has committed to provide at least 50 percent of the financing necessary to institute DBS service over the facilities covered by

---

[49]Fox I, 10 FCC Rcd 8452 at ¶ 43.

[50]Fox Television Stations, Inc., Second Memorandum Opinion and Order, 11 FCC Rcd 5714, ¶ 14 (1995).

[51]Fox I at ¶ 50.

MCI's DBS license. As such, focusing solely on the ownership of the licensee in this case leads to, in the Commission's words, "patently absurd results."[52] Thus, the Commission must determine that ASkyB cannot be authorized to select and provide programming over the MCI/BT DBS facility unless and until the Australian government provides reciprocal effective competitive opportunities to American DBS programmers.

III. U.S. FIRMS FACE ONEROUS RESTRICTIONS ON PROVIDING VIDEO PROGRAMMING AND SUBSCRIPTION TELEVISION SERVICES IN THE U.K. AND AUSTRALIA.

Time Warner understands that the Commission, in permitting a 28 percent total foreign interest in MCI in 1994, observed that the U.K. telecommunications services market was one of the most liberalized in the world and that there were no foreign ownership limitations on U.K. carriers.[53] Time Warner expects that the Commission will be urged to undertake a de novo review of the availability of effective competitive opportunities for U.S. carriers to offer telecommunications services in the U.K. in the context of the request for transfer of control to BT of MCI's FCC licenses used in the provision of telecommunications services.

Regardless of the outcome of that analysis, however, the openness of the U.K. to U.S. telecommunications firms is simply irrelevant in the context of an analysis of the public

---

[52]Id. at ¶ 43.

[53]MCI Communications Corporation - British Telecommunications plc, 9 FCC Rcd 3960, 3965 (1994). The Commission did not condition its declaratory ruling upon "comparable market access" to the U.K. At that time, the Commission had not yet adopted its ECO policy for international carriers, or even begun the rulemaking which led to it. When the FCC authorized BT's initial 25 percent investment in MCI, of course, MCI held no DBS authorization.

interest implications of a transfer of control of the DBS license at issue here. DBS and video program distribution services generally implicate additional types of regulatory burdens -- those involving program content -- as the Executive Branch departments commenting in the TelQuest proceeding recognized. Thus, a proper analysis of the public interest issues surrounding the proposed transfer of control of the DBS authorization at issue here requires a determination of the availability of effective competitive opportunities for U.S. firms to engage in the distribution of video programming generally, and of subscription satellite services specifically, in both the U.K. and Australia.

Time Warner appreciates that the U.K. has attempted to pursue a progressive and open trade policy with respect to video programming distribution. Indeed, Great Britain has been at the forefront of efforts to convince the European Union ("E.U.") against inflexible application of protectionist "European" content requirements. Despite Great Britain's laudable efforts, however, video programming distributors in the U.K. remain subject to E.U. restrictions. Pursuant to the mandates of Article 4 of the E.U.'s Television Without Frontiers Directive, Council Directive 89/552/EEC, 1989 O.J. L 298 26, the U.K. must restrict foreign programming content "where practicable" by seeking to ensure that broadcasters reserve for European works a majority proportion of their transmission time.[54]

---

[54]This calculation excludes the transmission time devoted to news, sporting events, games, advertising and teletext services. The E.U. institutions are taking steps to compel the U.K. to apply these European origin rules more strictly. First, the European Court of Justice recently rejected the British practice of licensing "non-domestic" broadcasters under relaxed standards. (*Commission of the European Communities v. United Kingdom*, Case C-222/94 (OJ C354/03, 23 Nov. 1996)). (Currently, all satellite broadcasters serving the British market are classified as "non-domestic" because they use satellites and frequencies allocated to other countries.) Further, pending revisions to the Directive itself would, if

(continued...)

Obviously, a prospective DBS provider in the U.S., such as ASkyB, is under no obligation to reserve a majority of the DBS transmission time for U.S. works. Thus, the disparity in competitive opportunities for DBS providers in the U.S. and the U.K., standing alone, provides a sufficient basis for denial of the subject transfer of control application. However, as explained above, given that News Corp.-controlled ASkyB will be the true economic beneficiary of the subject license, a complete public interest analysis should focus primarily on News Corp.'s home country, Australia.

Australian law imposes both ownership and content restrictions on subscription video providers. Australia's Broadcasting Services Act 1992 ("BSA") regulates the granting of broadcast licenses (including subscription television broadcasting licenses)[55] and the content of material which can be broadcast. Thus, for a U.S. firm such as Time Warner to engage in the activities in Australia which Australian News Corp. proposes to undertake in the U.S.

---

[54](...continued)
adopted, require the U.K. to enforce the European content rules equally with respect to both "domestic" and "non-domestic" satellite services (see Common Position (EC) No. 49/96 of the European Council, OJ C 264/52, 11 Sep. 1996). Finally, the European Commission has pending an infringement proceeding against the U.K. over its application of Article 4. That proceeding has been held in abeyance while revisions to the Directive are debated, but it may be expected to resume once those revisions have been adopted. Thus, although the U.K. itself has accepted American satellite video programming, it has done so in the face of E.U. hostility and may be compelled to adopt a harder line against non-European content in applying the E.U. Directive.

[55]Section 6 of the BSA defines the term "satellite subscription television broadcasting license" as including a license "to provide a subscription television broadcasting service with the use of a subscription television satellite." Accordingly, satellite subscription television broadcasting licenses are a subset of the larger category of subscription television broadcasting licenses. Accordingly, references in the BSA to "subscription television broadcasting license[s]" must be read to include satellite subscription television broadcasting licenses.

through ASkyB, such U.S. firm would have to obtain a subscription television broadcasting license under the BSA.

With respect to subscription television broadcasting licenses, the BSA imposes several restrictions. Significantly, foreign ownership in a company holding such a license is limited to a 20 percent interest individually, with total foreign ownership in the licensee not to exceed 35 percent in the aggregate.[56] The BSA does not, under its own terms, provide for any waiver mechanism with respect to such foreign ownership limits as are contained in applicable United States statutory and regulatory provisions.[57]

Australian law also imposes program quotas on subscription television. Subscription television broadcasting licensees which provide a service devoted predominantly to dramatic programs must, for each year of operation, ensure that at least 10 percent of their program expenditures for that year related to that service are spent on new Australian drama programs.[58]

---

[56]BSA, § 109(1)-(2).

[57]See 47 U.S.C. § 310(b)(4); 47 C.F.R. § 100.11(e) (pursuant to both provisions, the Commission can waive the applicable foreign ownership limits on a licensee's parent company if it determines that the public interest will be served thereby).

[58]BSA, § 102. The BSA defines a "drama program," in relation to subscription television broadcasting licenses, as including:

> "(a) a feature film of the kind that is commonly screened as a main attraction in commercial cinemas; and
>
> (b) a film that is similar in nature to a feature film but was produced for broadcasting on television; and
>
> (c) a mini series produced for broadcasting on television comprising an extended but self-contained drama and that is designed to be broadcast in 2 or more

(continued...)

Further, foreign investment in Australian companies in all sectors of the economy is governed by the Foreign Acquisitions and Takeovers Act 1975 ("FATA"). Pursuant to the FATA, Australia's Foreign Investment Review Board ("FIRB") examines proposals by "foreign interests" for investment in Australian companies and makes recommendations to the Australian government (specifically, the Treasurer) on such proposals. The Treasurer must then examine such proposals and will prohibit those proposals which are, in the Treasurer's judgment, contrary to the "national interest".[59]

Specifically, an Australian company with total assets valued at more than $5 million (Australian currency) must notify the FIRB of any acquisitions of shareholdings by foreign interests which amount to 15 percent individually or 40 percent in the aggregate.[60] Further, the FIRB must be notified in cases of takeovers of Australian companies with total assets

---

[58](...continued)
sequential parts; and

(d) a drama series produced for broadcasting on television that comprises a potentially unlimited number of episodes each of which:

(i) has a self-contained plot; and
(ii) can be broadcast in any order; and

(e) a continuing drama series produced for broadcasting on television that comprises a potentially unlimited number of episodes that are arranged into a consecutive series for broadcasting."

BSA, § 6. Time Warner understands that a current review of this law is underway, in which Australia is considering the doubling of this content requirement to 20 percent of expenditures and its extension to non-drama program services.

[59]"Australia's Foreign Investment Policy, A Guide for Investors," published September 1992 by the Australian Government Publishing Service, at 1, 13.

[60]Id. at 1-2.

valued at more than $5 million (Australian currency) by means other than the acquisition of shares, i.e., (a) by the purchase of assets or interests in assets; (b) by agreements in relation to board representation or by alteration of the articles of association or other constituent documents of a company; or (c) by arrangements for leasing, hiring, managing or otherwise participating in the profits of a business.[61] While FIRB notification is required in the above-mentioned instances, such proposals will only be fully examined and required to meet the national interest test if the Australian company's total assets are valued at $50 million or more.[62]

In short, the U.K. and Australia do not appear to provide effective competitive opportunities to U.S. satellite programming distributors. Under an ECO-type analysis, as the Executive Branch departments as well as MCI and News Corp. have previously advocated, MCI's transfer application may not be granted absent a showing that these home markets are implementing changes to the laws which keep their markets closed, particularly with respect to programming. Indeed, these are the same kinds of anti-competitive restrictions concerning which the Executive Branch departments expressed serious concerns in the TelQuest proceeding.

IV. THE COMMISSION HAS A PUBLIC INTEREST RESPONSIBILITY TO MAINTAIN NEGOTIATING LEVERAGE TO MAXIMIZE CHANCES FOR SUCCESS IN INTERNATIONAL TRADE NEGOTIATIONS.

For over 60 years, the Executive Branch has aggressively pursued international negotiations to break down foreign trade and investment barriers. The purpose of these

---

[61] Id. at 2.

[62] Id. at 4.

initiatives has been to create new economic opportunities for U.S. companies and their workers.

As first articulated by the Reciprocal Trade Agreements Act of 1934, the basic foundation of U.S. trade policy has been the negotiation of reciprocal and mutually advantageous agreements. This principle is also a basis for the General Agreement on Tariffs and Trade and the new World Trade Organization. Successful trade negotiations have generally required that access to the U.S. market be used as leverage to conclude agreements with our trading partners.

In light of ongoing and potential trade negotiations concerning foreign ownership and program content restrictions, the Commission has a public interest responsibility not to throw away the Executive Branch's leverage to open these foreign markets to U.S. program distributors. For example, audiovisual services such as the video programming delivered by DBS are included in the General Agreement on Trade in Services. Despite the efforts of U.S. trade negotiators, however, neither the European Union nor Australia has scheduled commitments on such services, and both have listed "cultural exemptions" to Most Favored Nations treatment. Thus, ownership and content restrictions will continue to confront American audiovisual media producers and distributors with substantial non-tariff trade barriers unless these can be eliminated or reduced through further trade negotiations -- negotiations in which it would be unwise to give up all potential leverage from the outset.

In addition, satellite services are included in the current telecommunications trade initiative under the World Trade Organization negotiations, the Negotiating Group on Basic

Telecommunications, behind which the U.S. is a driving force.[63] Again, it makes no sense for the U.S. to declare in advance that satellite television service licenses will be granted to foreign interests without consideration of the openness of their own markets, both with respect to program content restrictions and to overt foreign ownership restrictions.

Furthermore, liberalization of investment barriers will be at issue in negotiations within the Organization For Economic Cooperation and Development ("OECD") on the Multilateral Agreement on Investment ("MAI") in Paris. The OECD parties seek a meaningful investment agreement by May of 1997. Indeed, some countries have recently questioned the need for liberalization of investment restrictions under the MAI, preferring instead to grandfather existing barriers, including content restrictions. The FCC's grant of foreign entry into U.S. markets without consideration of reciprocal liberalization by foreign governments hampers the U.S. negotiating position in Paris at this critical juncture in the MAI negotiations over the coming months.[64] Permitting entities from Australia and the U.K., countries that impose substantial constraints on DBS licenses and programming, to benefit from this U.S. license despite the competitive barriers in their home markets would clearly undercut the U.S. position in all of these important trade negotiations.[65]

---

[63]Chairman Hundt has sought to promote open telecommunications markets at the World Trade Organization telecommunications negotiations. See FCC News, "FCC Chairman Urges All Countries of The World -- Developed and Developing -- To Support Competition In Telecommunications," released October 11, 1996.

[64]Telecommunications trade liberalization is potentially at issue in other trade negotiations as well, including the possible expansion of NAFTA into a free trade area in the Americas.

[65]Just this week, Rep. Charles R. Rangel, the ranking Democrat on the Committee on Ways and Means, wrote to the Chairman of the Commission that "[t]he International Bureau's decision to permit foreign entry to our DBS market without consideration of such

(continued...)

V. CONCLUSION.

Section 310(b) of the Communications Act and Section 100.11(e) of the FCC rules require the Commission to determine that foreign ownership of MCI would serve the public interest before approving the transfer of MCI's DBS authorization to BT. The foreign ownership of the DBS programming entity makes FCC scrutiny especially critical, as such ownership raises important trade, investment policy, foreign policy and national security issues. Accordingly, the FCC should not approve the transfer of control of MCI's DBS application to BT until it has conducted a thorough analysis, based upon a complete record, as to whether the United Kingdom and Australia satellite service and video programming markets are open to U.S. entities, based upon the policies underlying the ECO-Sat test.

In particular, FCC consent to the transfer of MCI's DBS license to BT should be specifically conditioned on full access by U.S. firms to the satellite and video programming markets of both the United Kingdom and Australia. At a very minimum, to the extent that the Commission may elect to consider whether to apply an "ECO" analysis to all DBS licensees and programming providers in a comprehensive rulemaking proceeding, then the transfer of control of the instant DBS license to BT, and the authority of Australian-controlled ASkyB to act as the provider of DBS service over such license, must be expressly conditioned upon the outcome of such rulemaking. The only viable alternative would be to require strict compliance with Section 310(b) of the Act and Section 100.11 of the

---

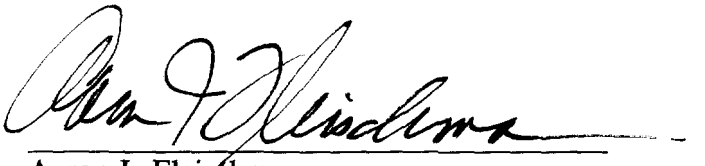
[65](...continued)
entry barriers in [the] relevant foreign country potentially jeopardizes our ability to open markets to U.S. audiovisual services. Indeed, the decision may undercut the U.S. position in trade negotiations now underway." See Exhibit 4 hereto.

Commission's rules, by requiring BT to reduce its stake in the DBS licensee to no more than 25 percent and News Corp. to reduce its interest in ASkyB to no more than 25 percent, conditions analogous to those imposed in the recent NextWave case.

The subject DBS authorization is the last full-CONUS allocation available for award by the U.S. government. Thus, if the Commission fails to seize this opportunity to condition the license transfer on a finding of reciprocal entry opportunities for U.S. firms in the U.K. and Australian satellite and video programming markets, the final opportunity to advance this important U.S. trade policy objective will be forever lost.

Respectfully submitted,

TIME WARNER INC.



Aaron I. Fleischman
Arthur H. Harding
Christopher G. Wood
Regina F. Pace

Fleischman and Walsh, L.L.P.
1400 16th Street, N.W., Suite 600
Washington, D.C. 20036

Charles S. Levy
W. Scott Blackmer
Jacquelynn Ruff

Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, D.C. 20037-1420

Its Attorneys

Date: January 24, 1997

48535.3

EXHIBIT 1

Letter from Jeffrey M. Lang, Deputy U.S. Trade Representative, Office of the U.S. Trade Representative; Hon. Larry Irving, Assistant Secretary for Communications and Information, Department of Commerce; and Ambassador Vonya B. McCann, U.S. Coordinator, International Communications and Information Policy, Department of State, to Reed E. Hundt, Chairman, Federal Communications Commission, dated November 27, 1996.

United States of America

Office of the U.S. Trade Representative
Department of Commerce
Department of State

Washington, D.C.

November 27, 1996

Reed E. Hundt, Chairman
Federal Communications Commission
Washington, D.C. 20554

Re: Application of MCI Telecommunications Corp.
For an Initial Construction and Launch
Authorization in the Direct Broadcast
Satellite Service
File No. 73-SAT-P-96

Dear Chairman Hundt:

We are writing in connection with the above-referenced application of MCI Telecommunications Corporation (MCI) for an initial construction and launch authorization in the direct broadcast satellite (DBS) service. We note that MCI announced recently its plans to merge with British Telecommunications.

With respect to any action that you may take on the pending DBS application, we hereby request that such action expressly preserve the ability of the Executive Branch to make recommendations to you on matters of trade and investment policy, foreign policy or national security in the event that MCI seeks to transfer control of any DBS licensee or assign any DBS license. In particular, any such action on the application should preserve the ability of the Executive Branch to make recommendations to the Commission on the appropriate criteria for

reviewing any such transfer or assignment, particularly if the transfer or assignment involves foreign entities, and notwithstanding the regulatory classification of the DBS licensee.

Sincerely,

Amb. Jeffrey M. Lang
Deputy U.S. Trade Representative
Office of the U.S. Trade Representative

Hon. Larry Irving
Assistant Secretary for Communications and Information
Dept. of Commerce

Amb. Vonya B. McCann
U.S. Coordinator International Communications and Information Policy
Dept. of State

cc: Donald Gips, Chief
International Bureau

EXHIBIT 2

Letter from Hon. John D. Dingell, Edward J. Markey, Ernest F. Hollings and Daniel K. Inouye to Reed E. Hundt, Chairman, Federal Communications Commission, dated December 19, 1996.

Congress of the United States
Washington, DC 20515

December 19, 1996

The Honorable Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Dear Mr. Chairman:

We are writing with respect to the application of MCI Telecommunications Corp. for an initial construction and launch authorization in the Direct Broadcast Satellite Service (File No. 73-SAT-P-96). We have several questions concerning the decision by the staff (acting on delegated authority) to grant this application, and would request a response to this letter before the Commission takes any final action on this matter.

1. In what proceeding(s) did the Commission determine that a subscription DBS service could be regulated differently from all other broadcast services, and consequently regulated as a private service?

2. Why does a subscription service differ from other broadcast services?

3. Why would policies relevant to foreign ownership with respect to broadcast services not be relevant to a subscription DBS service, particularly one, such as that proposed by MCI, that serves the entire continental United States?

4. In what proceeding(s) did the FCC create a third regulatory category (private carrier), and how did it determine that Section 310(b) of the Communications Act (47 U.S.C.310 (b)) which applies to common carrier and broadcast services, should not apply to private carrier service?

5. Why did the Commission decide to address now the question of whether Section 310(b) applies to MCI's DBS license, rather than grant a waiver and defer the larger question to a subsequent rulemaking?

6. Does the Commission's decision preserve the right of the Executive Branch to make recommendations to the Commission on the appropriate criteria for reviewing foreign transfers or

assignments, regardless of their regulatory classifications, as requested by the Administration in its letter to the Commission dated November 27, 1996?

As we noted above, we would appreciate receiving your response to this letter before the Commission takes any final action on the referenced application. We look forward to your prompt reply.

Sincerely,

JOHN D. DINGELL

EDWARD J. MARKEY

ERNEST F. HOLLINGS

DANIEL K. INOUYE

EXHIBIT 3

Letter from Ambassador Vonya B. McCann, U.S. Coordinator, International Communications and Information Policy, U.S. Department of State; David S. Turetsky, Deputy Assistant Attorney General, Antitrust Division, U.S. Department of Justice; Jeffrey M. Lang, Deputy U.S. Trade Representative, Office of the U.S. Trade Representative; and Hon. Larry Irving, Assistant Secretary for Communications and Information, Department of Commerce, to Reed E. Hundt, Chairman, Federal Communications Commission, dated July 1, 1996.

United States of America

Department of State
Office of the U.S. Trade Representative
Department of Commerce
Department of Justice

Washington, D.C.

July 1, 1996

Reed E. Hundt, Chairman
Federal Communications Commission
Washington, D.C. 20554

Re: TelQuest Ventures, L.L.C., File Nos. 758-DSE-P/L-96, 759-DSE-L-96 and Western Tele-Communications, Inc., File No. 844-DSE-P/L-96

Dear Chairman Hundt:

Members of the Executive Branch[1] have reviewed the above-referenced applications and associated filings to determine whether the applications filed by TelQuest Ventures, L.L.C. ("TelQuest") and Western Tele-Communications, Inc. ("WTCI") raise foreign, trade or competition policy issues within the jurisdiction of the Executive Branch. While that review is not complete, the Executive Branch recommends that given the uncertainty over whether the Government of Canada has or will grant Telesat Canada ("Telesat") a license or otherwise authorize Telesat to launch satellites into the Canadian orbital slots, it would be prudent to defer action on the TelQuest and WTCI applications at this time.

The public record indicates that the Government of Canada has not authorized Telesat to launch satellites into the Canadian orbital slots for the purposes described in the applications. While WTCI's filings state that the Canadian Government is prepared to "support" Telesat's use of the orbital slots, that support is subject to "certain conditions."[2] There is no

---

[1] Those members are the Departments of Commerce, Justice, State and Treasury, and the Office of the United States Trade Representative.

[2] In re Western Tele-Communications, Inc., Application for a License for a New Satellite Transmit/Receive Earth Station, Consolidated Opposition to Petitions to Deny and Request for

evidence on the record concerning the nature of those conditions. Consequently, the Executive Branch is unable to determine whether, and if so how, those conditions affect the issues under consideration by the Executive Branch. To complete its consideration of those issues, the Executive Branch must be able to review Telesat's space station authorization and the terms and conditions contained therein. Accordingly, the Executive Branch recommends that the Commission defer action on the applications pending the Canadian Government's authorization of Telesat, and review of that authorization by the Executive Branch, the Commission and other interested parties.

While it has not completed its review of the foreign, trade and competition policy issues raised by the TelQuest and WTCI proposals, the Executive Branch notes the following concerns have been raised.

1. International Agreement Obligations. The United States has a number of international agreements that may be affected by the proposals advanced by TelQuest and WTCI. Under the agreements of the International Telecommunication Union, for example, the United States and Canada have obligations that must be met and/or modified before the planned satellites could be brought into operation. In addition, the Executive Branch is reviewing other agreements and understandings, both bilateral and multilateral, to determine whether or to what extent they may be affected by the TelQuest and WTCI proposals.

2. Canadian Content Restrictions. Canada discriminates against U.S. and other foreign programmers and service providers in a number of ways. For example, Canada imposes extensive content restrictions on television and cable broadcasting, including a requirement that direct-to-home ("DTH") service providers offer a "preponderance" (a minimum of 50%) of Canadian content. Further, these regulations are subject to unpredictable change after non-transparent government review. As one result of this uncertainty, a U.S. DTH pay audio service was twice granted a broadcasting license only to have it overturned each time to allow consideration of whether more Canadian content should be required.

3. Canadian Licensing Restrictions. The Government of Canada also maintains restrictions over the use of non-Canadian satellites for the distribution of telephony and broadcasting services to Canada. The Canadian Government would not allow a U.S. satellite to provide DTH services to Canada -- the exact analogy of the TelQuest and WTCI proposals. Even if the Government of Canada were to allow U.S. satellites to offer DTH

Expedited Action of Western Tele-Communications, Inc., File No. 844-DSE-P/L-96, Exhibit 2 at 2 (May 20, 1996).

service to Canada, Canada's content restrictions would prohibit a U.S. DTH provider (or its Canadian affiliate) from offering its DTH service to Canadian customers. The Government of Canada allows a temporary exception to these licensing restrictions if there is no available Canadian satellite, but it does not guarantee that the license will be available or renewable for a specific license term. The government could revoke the authorization at any time that a Canadian satellite becomes available.

4. Competition Policy. Tele-Communications Inc. ("TCI"), WTCI's parent corporation, is the largest cable television provider in the United States. There is some concern that TCI, given its market position, may have an incentive to engage in anti-competitive behavior in parts of the U.S. market.

The Executive Branch will continue its review and deliberation of the concerns noted above, as well as other issues, including the terms and conditions of any license issued to Telesat by the Canadian Government. Upon completion of its review, the Executive Branch may transmit additional views to the Commission concerning the TelQuest and WTCI proposals.

Sincerely,

Ambassador Vonya B. McCann
U.S. Coordinator
International Communications
and Information Policy
U.S. Department of State

Ambassador Jeffrey M. Lang
Deputy U.S. Trade
Representative
The Office of the U.S.
Trade Representative

David S. Turetsky
Deputy Assistant Attorney
General
Antitrust Division
U.S. Department of Justice

Larry Irving
Assistant Secretary
for Communications and
Information
U.S. Department of Commerce

cc: Donald Gips, Chief
International Bureau

EXHIBIT 4

Letter From Hon. Charles R. Rangel To Reed E. Hundt, Chairman, Federal Communications Commission, Dated January 20, 1997

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515–6348

January 20, 1997

The Honorable Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Dear Chairman Hundt:

I am writing in my capacity as Ranking Democrat on the Committee on Ways and Means, which as you know has jurisdiction over international trade agreements.

I have been advised that the International Bureau recently granted the application of MCI for the last remaining nationwide direct broadcast satellite (DBS) license. This grant would appear to raise very significant issues that, in my opinion, demand careful review by the Commission. I have been further advised that, in granting MCI this license, the International Bureau decided that the foreign ownership restrictions found in the Communications Act and the FCC's regulations do not apply to DBS systems that provide pay television services directly to home subscribers. This far-reaching policy decision could seriously compromise the efforts of the United States to negotiate reduction or elimination of barriers that now restrict US entry in foreign DBS markets — an important objective of US trade policy. In light of this, I ask the Commission to review the Bureau's decision with the opportunity of a public comment period to consider the trade policy (as well as other relevant) issues.

The grant of this license raises trade issues because the Bureau's decision provides opportunities in our satellite market to foreign companies without regard to the openness of their home markets, while other countries deny those very opportunities to US companies. British Telecom (a UK company)will shortly acquire 100% of MCI, and the DBS services will operate under a programming and distribution contract with AskyB, a 50/50 joint venture of MCI and News Corp. (An Australian company). U.S. companies interested in playing the same roles in UK and Australian markets face formidable non-tariff trade barriers. For example, the UK must implement EU content quotas that require broadcasters to reserve the majority of their transmission time for European works. Australia limits aggregate foreign investment in DBS systems to 35% and imposes content quotas on DBS providers. The International Bureau's

decision to permit foreign entry to our DBS market without consideration of such entry barriers in relevant foreign country potentially jeopardizes our ability to open markets to US audiovisual services. Indeed, the decision may undercut the US position in trade negotiations now underway.

I urge the Commission to carry out a process that evaluates the impact on the public interest of these trade policy considerations. At this point, I do not take a position on whether the FCC should ultimately uphold the grant of this DBS license or approve its transfer to BT, nor do I raise issues regarding the BT/MCI acquisition in general. But I do believe that a decision on the application of the foreign ownership rules to the most common form of DBS operations should only be made after Commission review, with input from the Administration, the Congress and the public, and not as the result of a Bureau decision on a particular license.

Thank you for your attention to this matter.

Sincerely,

Charles B. Rangel
Ranking Democrat

CBR/bwt